

Métis Settlements Ombudsman

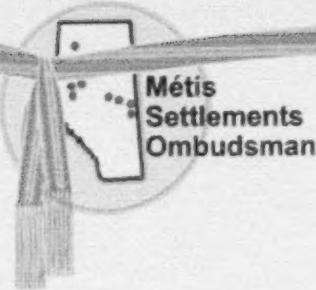


Annual Report
April 1, 2011 to March 31, 2012

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July 2012

The Honourable Robin Campbell
Minister of Aboriginal Relations
323 Legislature Building
10800-97 Avenue
Edmonton, Alberta
T5K 2B6

Dear Honourable Minister:

I am honoured and pleased to present you with the ninth Annual Report of the activities of the Office of the Métis Settlements Ombudsman.

This report is submitted in compliance with Alberta Regulation 116/2007, Metis Settlements Act, *Metis Settlements Ombudsman Regulation*, section 12(1)(a), covering the period April 1, 2011, through March 31, 2012.

Respectfully,

Original signed by:

Harley Johnson
Alberta Métis Settlements Ombudsman

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MESSAGE FROM HARLEY JOHNSON, ALBERTA MÉTIS SETTLEMENTS OMBUDSMAN



Tansi once again

Need for Independence

As I mentioned in last year's Annual Report Message, the migration of the Office of the Métis Settlements Ombudsman from a contracted organization to the Government of Alberta, while not painless, was relatively easy. However, the results of this migration have had the effect of undermining primary key components of an Ombudsman's role —independence, impartiality, and confidentiality. These basic principles are the foundation throughout international legislation establishing a role of Ombudsman, supported by the International Ombudsman Institute, and described in the International Ombudsman Association 'Standards of Practice'. In addition, these principles were clearly outlined in the Final Report, *Metis Settlements Ombudsman to the Metis Settlements Transition Authority*, June 2001 (McDonald Report).

Following the migration of the Office, many discussions took place to try to ensure that the operational independence remained intact while the administrative side conformed to Government's policies and processes. In effect, this change has created a schizophrenic organizational structure whereby staff report to and are responsible to the Ministry's administration but are required to comply

with the operational directives from me as the MSO. As the administration is part of the Ministry, independent operational issues are dependent on administrative processes —including staffing, budget constraints and controls.

As to impartiality, legal advice and opinions are now provided to the Office of the Métis Settlements Ombudsman by Alberta Justice —the same people who in fact provide legal advice to the Minister and to the Ministry. In my opinion, this situation is not only a conflict of interest but this closely-related relationship was clearly not envisioned in the previously mentioned McDonald Report and the subsequent instalment of an Ombudsman. In addition, any properly established 'classical Ombudsmen' and the vast majority of departmentally appointed Ombudsmen have their own legal counsel. It is unfortunate that I have been singularly unsuccessful in convincing government authorities of this need. To be effective, this office needs to be independent, impartial, and transparent. I will continue to press for the degree of separation necessary for this office to operate properly. To me, a major problem is the structure and reporting relationship. On a similar theme, the Office is at minimum, one staff member (Advisor) short to complete the Reviews and Investigations relating to the complaints we receive in a timely manner. A short contract was awarded to a Settlement Member to tackle the backlog of complaints. This contract did assist, but in no way was it able to put a real dent in those numbers.

It may well be time to do a full and comprehensive review of the office.

Notwithstanding these major hurdles, the Office and the dedication of the staff have had some very positive results. A investigation was completed on a settlement where there was evidence supporting a criminal action on the part of a Councillor and a staff member. This evidence was subsequently turned over

to the RCMP as the agency of competent jurisdiction. This investigation also identified evidence of an unlawful political contribution which was subsequently submitted to the Chief Electoral Officer for whatever action he deemed appropriate. A full report and a number of recommendations were submitted by me to the then Minister of Intergovernmental, International, and Aboriginal Relations (as it was at the time).

A second major investigation identified evidence that three settlements (and some settlement members) were defrauded of a significant amount of money through an investment scheme involving a covered golf course. This evidence was turned over to the Edmonton Police Service as the agency of competent jurisdiction, as well as the Alberta Securities Commission. In addition, evidence was uncovered suggesting a person in authority may have unlawfully accepted gifted shares in this corporation. This evidence also was subsequently turned over to the Edmonton Police Service. A major investigative report is in the queue which will, in due course, be submitted to the Minister of Aboriginal Relations with numerous recommendations for the Minister's consideration. I have received another report of a re-investigation of a previous issue and I will be submitting my analysis and report to the Minister of Aboriginal Relations in the very near future along with recommendations. I am also currently awaiting a report of an Investigator concerning complaints of inappropriate activities on the part of a settlement-owned corporation(s) and investment activities.

In addition, the number of telephone calls and meetings with members of the different Settlement Councils and Administration personnel seeking advice and assistance, prior to making decisions, continues to increase. These discussions, while mostly informal, have a significant effect in ensuring proper process techniques are utilized in making those decisions.

I was very pleased to be invited by the Métis Settlements Appeals Tribunal to participate in

meetings and discussions with three Métis Settlements, including presentations to the schools on these Settlements. It almost goes without saying that the current students of these schools are the future political and administrative leaders both on and off the Settlements. A number of the questions asked by the students to members of the Appeals Tribunal, the Métis Settlements Land Registry, and to me, were well thought out and identified a definite interest in protecting the future of the Settlements.

Participation in public, private, and settlement meetings are, in my opinion, an absolute necessity. As long as I am in Office, I will continue to advocate that they happen.

I also continue to be impressed with the vision, energy, and passion I encounter during my visits to the Settlements. I respect what Settlements are trying to accomplish, and I accept that the vast majority of actions taken by Settlement leaders are done so in the best interest of Settlement members. Within that respect, I also know that there are issues to be resolved and that I will continue to make recommendations that I am convinced will improve the services offered to all Settlement members.

To my own staff, the personal and professional support you provide and the dedication to this Office is nothing short of exemplary.

To the new Minister of Aboriginal Relations, the Honourable Robin Campbell, as your delegate pursuant to the *Métis Settlements Act*, I will continue to review, investigate, inspect, and report my findings to you in the form of recommendations that are consistent with the legislation and appropriate for implementation within the Settlements' framework.

To the Settlement Elders, Leaders, Members, and future leaders, this Office will continue to do our part in ensuring the governance structure you deserve.

MÉTIS SETTLEMENTS OMBUDSMAN'S BIOGRAPHY

Harley Johnson, BA, MPA

Harley Johnson was appointed as the first Alberta Métis Settlements Ombudsman in March 2003 until June 2007. From 1990 to 1997, Mr. Johnson served as Alberta Provincial Ombudsman. During this time, he took on an additional role as the Yukon's first Ombudsman and Information and Privacy Commissioner.

Prior to being appointed as Alberta's Ombudsman, Mr. Johnson was a Police Superintendent with the Calgary Police Service and served as Manager of Olympic Security with the 1988 Olympic Winter Games Organizing Committee in Calgary. Subsequent to his term as Ombudsman, Mr. Johnson chaired the Alberta Gaming Summit, the Alberta Health Summit and the Legislative Review of the *Alberta Blind Persons' Rights Act*. He also served as a Board Director for the 2001 World Championships in Athletics held in Edmonton, chairing the Operations Division.

Mr. Johnson was Executive Director of the International Ombudsman Institute from 1992 to 1996. In this capacity, he was involved in many projects around the world. He has been an advisor in the development of ombudsman legislation in Ethiopia, Arizona, Vietnam, and in the establishment of a Human Rights Commission in Russia. He has lectured on investigative techniques in Taiwan and Cambodia. Other presentations have been made to the Mexican Human Rights Commission, the Canadian Police College, Argentina's Office of the Defensor del Pueblo, and numerous locations throughout Alberta.

In 1996, Mr. Johnson was awarded a lifetime membership in the International Ombudsman Institute for his work in the field.

In November 2010, at the request of the Minister of Aboriginal Relations, Mr Johnson returned as the fourth Métis Settlements Ombudsman.

Mr Johnson resides in Edmonton and is very proud of his seven *nosisimak*.

■ MEET THE OMSO STAFF

The Office of the Métis Settlements Ombudsman (OMSO) has been operating since April of 2003. Our goal is to provide exceptional service to the members, Councils and staff of the eight Alberta Métis Settlements.

Staff members as of March 31, 2012



Left to right:

Harley Johnson, *Métis Settlements Ombudsman*

Kalina Garrity, *Office Administrator*

Keith Pink, *Advisor*

Joe Pendleton, *Senior Advisor*

Pamela Calliou, *Contract Advisor*

We thank the following people who contributed so much to our role over the past year, and especially to Danielle who did so over a period of 6 years.



Pamela Calliou
Contract Advisor

Pamela, a member of the Paddle Prairie Métis Settlement, was contracted to our office for several months to assist with our backlogged files.



Linda Lewis
Director

Linda Lewis joined our office in November 2010, during the offices' transition to government. She returned to Métis Relations in November 2011, but retains her title and continues to oversee the administration of the OMSO.



Danielle Cardinal
Advisor

Danielle started with the office as a summer student in 2005. Over the years she advanced into a junior advisory role and finally the role of advisor. Danielle left our office in June 2011.

STAFF TRAINING, CONFERENCES AND PRESENTATIONS 2011/2012

Training and Conferences:

- ▶ Employment and Labour Law Seminar
- ▶ Freedom of Information Protection of Privacy Training
- ▶ Harassment in the Work Place Training
- ▶ Forum of Canadian Ombudsman Conference
- ▶ How To Investigate: The Fundamentals Of Effective Fact-Finding
- ▶ Patriation Negotiations Conference
- ▶ Professional Minute Taking
- ▶ Management Development Program

Presentations:

- ▶ Métis Settlements Appeal Tribunal presentation
- ▶ Métis Settlements Ombudsman presentation to Métis Settlements General Council Executive
- ▶ MSGC New Councillor Workshop
- ▶ East Prairie Public meeting
- ▶ East Prairie Hillview school
- ▶ Gift Lake Pubic meeting/Elders Meeting
- ▶ Peavine Public meeting
- ▶ Peavine Bishop Routhier School

Meetings and Social Functions:

- ▶ Métis Settlements General Council Christmas Dinner
- ▶ Métis Settlements Appeal Tribunal Golf Tournament
- ▶ Métis Settlements General Council Golf Tournament

OVERVIEW

Background

The Office of the Métis Settlements Ombudsman (OMSO) was created in 2003 to provide an independent and impartial place to take complaints about Settlements' management or leadership. It also exists to identify unfair or unjust complaints made against the Councils and staff.

An ombudsman function was recommended by a 1999 Métis Settlements Appeal Tribunal Task Force report and was later supported by a feasibility study. The majority of Métis Settlement members and elders attending community consultation meetings supported this recommendation.

Alberta's Minister responsible for Aboriginal Relations appoints the Métis Settlements Ombudsman (MSO) based on a recommendation of a Selection Committee as outlined in Section 4 of the Metis Settlements Ombudsman Regulation (Alberta Regulation 116/2007). The Minister delegates the MSO to receive complaints and to appoint inspectors and investigators as needed. The individuals appointed by the MSO have the authority to conduct independent inspections or investigations, with the powers of a Commissioner, under the Alberta Public Inquiries Act.

Mission Statement

The mission of the Office of the Métis Settlements Ombudsman (OMSO) is to promote the rights and responsibilities of Métis Settlement Councils, staff, entities, and members, through inspections, investigations, and recommendations.

Guiding Principles

The mission will be accomplished utilizing the principles of administrative fairness and conflict of interest guidelines, promoting ethical leadership. (In order to better understand the principles of Administrative Fairness and Conflict of Interest, guidelines have been developed – please refer to Appendix C and Appendix D.)



■ OBJECTIVES

The Office of the Métis Settlements Ombudsman (OMSO)

- ▶ will assist Settlement members and Councils to understand the concepts of administrative fairness and conflict of interest.
- ▶ will promote appropriate standards for the delivery of Settlement services.
- ▶ will accept complaints from Settlement members and other individuals who feel that an administrative error or injustice has occurred in their dealings with a Métis Settlement Council, staff, or Settlement entity.
- ▶ will accept complaints from Settlement members and other individuals who feel that a Métis Settlement Council, an individual Councillor, staff member, or employee of a Settlement entity has been involved in a conflict of interest.
- ▶ will identify frivolous, vexatious, or unjust complaints against members of a Métis Settlement Council, staff, or an employee of a Settlement entity.
- ▶ may conduct an investigation/inspection where a review of the complaint identifies sufficient evidence to indicate an administrative error or injustice may have occurred in which a Council, Councillor, staff member, or an employee of a Settlement entity has acted in a real or perceived conflict of interest.
- ▶ may inspect/investigate administrative fairness or conflict of interest issues under the auspices of an Ombudsman's Own Initiative investigation.
- ▶ will communicate the results of an inspection/investigation in any fashion the MSO deems to be appropriate, including recommendations to resolve a specific complaint or to improve a service delivery system.
- ▶ will advocate for all recommendation(s) made and will track implementation steps.

The OMSO:

- ▶ cannot accept complaints about issues which occurred before March 31, 2002.
- ▶ may insist that all appeals available to a complainant be completed before the OMSO becomes involved.
- ▶ is guided by the provisions of Sections 171-175 of the Metis Settlements Act and the Metis Settlements Ombudsman Regulation (Alberta Regulation 116/2007).

■ COMPLAINT PROCESS

Investigation and Resolution

It is the mandate of the OMSO to hear complaints and concerns and to deal with them in the most appropriate way. When a complaint is received, the MSO will determine if there is enough evidence to implement a review. If a review reveals that an error or irregularity has occurred, the OMSO works informally with those involved to try to resolve the concern and to prevent the same error from happening again.

Concerns that cannot be resolved through the review process, may then be approved for further investigation. The results of investigations may be made public.

Making a Complaint

Anyone may make a complaint to the OMSO. However, an individual who has a complaint must first try to resolve the matter him/herself. This includes going through any formal appeal processes that might exist within the Métis Settlements. Anyone who remains dissatisfied after appeals are heard is welcome to bring a complaint to the OMSO. Complainants do not have to be members of a Métis Settlement.

There is no fee for filing a complaint.

Complaint Criteria

To be considered, a complaint:

- ▶ must be about an issue which occurred on or after March 31, 2002. Occasionally, an issue that occurred prior to March 31, 2002 may be reviewed if action (e.g. a decision) on a complaint was taken after March 31, 2002.
- ▶ should be in writing. OMSO Complaint Forms (available through the OMSO) must be completed, including the name, address, telephone number, and signature of the person making the complaint.
- ▶ must relate to the activities or business of an Alberta Métis Settlement, Settlement Council, individual Settlement Councillor, or staff.
- ▶ must involve alleged mismanagement, an unfair practice, or a conflict of interest.
- ▶ must be based on facts or evidence,

Four basic stages have been developed for the MSO's process of looking into a complaint

Further Inquiries:

When a complaint has been received, but there is not enough information to proceed, the OMSO staff contact the person who submitted the complaint to clarify the issue(s) or to make sure the matter is within the jurisdiction of the MSO.



Review:

Once the MSO is satisfied the issue is within the jurisdiction of the MSO and the complaint appears to have merit, a *review* is authorized. The advisor/investigator may then contact the Council, staff, or Settlement entity to seek help in determining if there is evidence to suggest an error or inappropriate activity occurred. The advisor/investigator then submits recommendations to the MSO based on the findings. That recommendation might be: to close the file, as there is a lack of evidence to support the complaint; to enter into a formal inspection or investigation; or to suggest any other action the advisor/investigator may feel is appropriate. Mediation techniques might also be used during this stage to resolve the complaint.

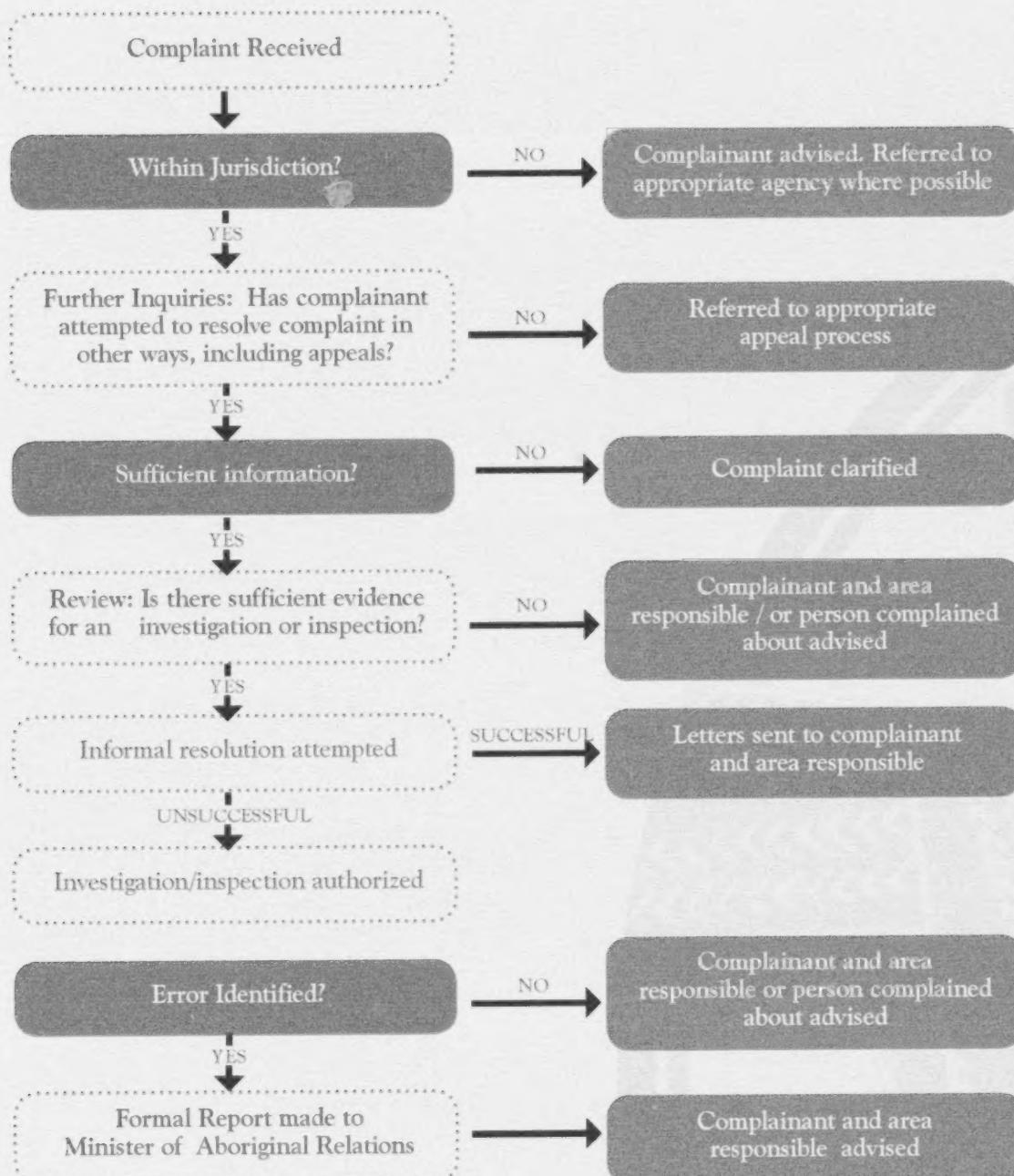
Investigation/Inspection:

If there is enough evidence to suggest an error occurred, or a Council, staff member, or Settlement entity has acted inappropriately, and it cannot be resolved through mediation, a formal investigation or inspection is authorized under the *Metis Settlements Act* (MSA). Once appointed under the MSA, an investigator has the same power and authority as a Commissioner under the *Public Inquiries Act*. Normally, the person who completed the review of the initial complaint would not be appointed as an investigator.

Formal Report:

The MSO will submit the Investigation along with the MSO's analysis and appropriate recommendations to the Minister of Aboriginal Relations. Complainants and the areas which were the subject of the complaint will be notified of this action. The MSO may make any report that the MSO considers necessary or appropriate to the Métis Settlements General Council, a settlement council, or any other person.

■ COMPLAINT PROCESS FLOWCHART



■ STATISTICAL INFORMATION

The OMSO keeps internal, confidential records on the complaints it receives. Statistics are kept to help identify trends and/or areas of concern and to provide direction and focus for the OMSO. The following chart shows the number of complaints received according to Settlement:

Settlement:	Number of Complaints (Member) 2010/2011	Ombudsman's Own Initiative 2010/2011	Number of Complaints (Member) 2011/2012	Ombudsman's Own Initiative 2011/2012
Buffalo Lake	12	2	43	21
East Prairie	10	0	39	1
Elizabeth	8	5	17	0
Fishing Lake	79	4	21	1
Gift Lake	2	0	4	0
Kikino	9	0	2	0
Paddle Prairie	13	0	24	7
Peavine	3	0	21	0
Other	1	0	4	0
TOTAL	137	11	175	30
			205	

Files Brought Forward as of April 1, 2011: 258

Complaints/Ombudsman's Own Initiative 2011/2012: 205

Total: 463

Resolution of Jurisdictional Complaints/ Ombudsman's Own Initiative: 192

Resolution of Non-Jurisdictional Complaints: 43

Total Complaints Resolved (in fiscal year 2011/2012): 235

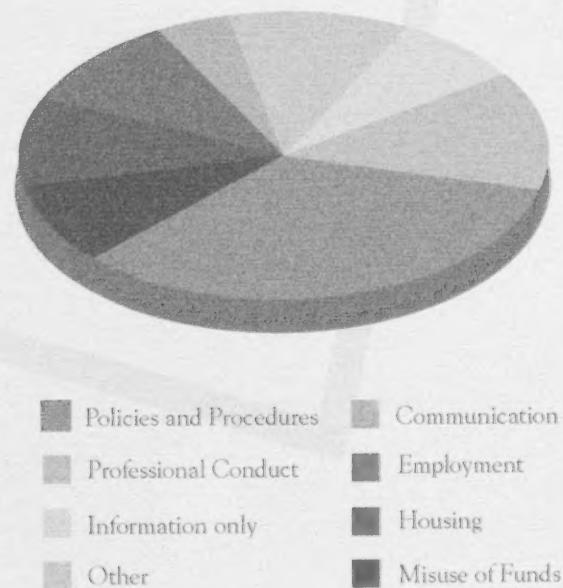
Total Active Files as of April 1, 2012 228

Jurisdictional Complaints/Ombudsman's Own Initiative 2011-2012

Complaints are divided into jurisdictional, which the MSO has the authority to look into, and non-jurisdictional, which fall outside the authority of the MSO.

Jurisdictional complaints are then designated as matters of either Administrative Fairness or Conflict of Interest. Under those two headings, complaints are further broken down into categories, as outlined in the following tables:

Complaint Category	Administrative Fairness	Conflict of Interest
Communication	6	0
Employment	13	4
Housing	17	3
Misuse of Funds	16	0
Policies and Procedures	50	1
Professional Conduct	15	4
Information Only	13	1
Other	19	0
Subtotal	149	13
Total	162	



Complaints Received - April 1, 2011 to March 31, 2012

Jurisdictional Complaints/Ombudsman's Own Initiative	162
Non-jurisdictional Complaints	43
Total	205

The OMSO makes every attempt to bring about a positive conclusion (for both the complainant and for the party being complained about) through mediation and recommendations.*

Jurisdictional complaints were resolved as follows in 2011/2012.

Resolution of Jurisdictional Complaints/Ombudsman's Own Initiative Files Closed 2011/2012	
Disposition:	
Oral complaint/no formal complaint submitted	61
Inquiry made/referral given/resolution facilitated	13
Complaint Withdrawn	12
Reviewed: Insufficient evidence to warrant inspection and/or investigation	23
Reviewed: Sufficient evidence identified and resolved through:	
► mediation/arbitration	
► complaint withdrawn	4
► informal resolution successful	
► recommendation made to Council (response pending)	
Inspection/Investigation: insufficient evidence	14
Inspection/Investigation, recommendation made/issue resolved through:	
► mediation/arbitration	
► complaint withdrawn	4
► recommendation accepted/implemented	
► referred to agency that has jurisdiction	
Formal report to the Minister	61
Total	192

* Resistance and a lack of co-operation from some Settlement Councils and Administrations makes the review/investigation of complaints difficult to bring to conclusion.

CASE SUMMARIES

Every effort is made to avoid taking issues to the level of a formal investigation. The goal of the OMSO is to resolve issues through a co-operative review. However, if appropriate resolution cannot be achieved, a formal investigation may be authorized by the MSO.

The following case summaries provide a sampling of the types of complaints the OMSO received in 2011/2012. Every attempt has been made to protect the identity of the individuals involved.

No Council Resolution

A complaint was received by the OMSO that a contractor was given a contract without a Council Resolution. A cooperative review was conducted which identified that a contract was in place with an individual; however, this individual worked beyond the contract end-date with Council's support and was paid by the Settlement.

This complaint identified the need to ensure that Councils properly attend to the processes required by the Metis Settlements Act, their Settlement By-laws, and Policies. A recommendation was made to Council that a retroactive authorization for this work should be considered. The current Council felt that it would be improper to authorize work conducted through a previous Council but indicated that they are well aware of the need to conduct business in an appropriate manner. No further complaints have been received involving this issue with the current Council and Administration.

Unauthorized trip for a Member of Council

A number of complaints were received about a Councillor taking inappropriate trips. A review was conducted on one Settlement which identified that a trip was taken by a Councillor without proper authorization and that out-of-pocket expenses were reimbursed for this unauthorized travel. In this case, our review identified that Council had discussed travel to attend a conference but failed to put a motion in place. Additionally, the trip was discussed by Council during a meeting of the Board of Directors of a wholly-owned settlement entity as opposed to a regular council or public meeting. The

reimbursement, however, came directly from settlement funds. This review identified a need for a degree of separation between the activities of a settlement entity and the settlement itself. This complaint was supported by the evidence gathered during the review and appropriate recommendations were made.

This review does not challenge the right of a settlement to be engaged in activities in support of settlement objectives, including properly authorized trips required to accomplish those activities.

This review also identified that the time has come for settlements to consider appointing other settlement members to the Board of Directors on Settlement entities rather than the Council over-seeing all businesses. This step would clearly identify a separation between the Council and a settlement entity. It would also enhance transparency — an often discussed but never truly implemented.

Unauthorized trip for a Member of Council

A complaint was received, similar to the previous summary, that a Councillor took a business trip out-of-country without proper authorization. In this case, discussions were held by Council agreeing that the trip should be taken; however, Council failed to pass an appropriate resolution. The complaint was supported by the evidence and appropriate recommendations were made.

In both the previous mentioned cases, Council has indicated that business trips are now only taken if all the authorizations and sign-offs are in place. The issue will be monitored to ensure that this practice is in fact what is happening.

Financial Mismanagement

Between April 2009 and February 2011, the OMSO received 11 complaints from several members of a Settlement alleging financial mismanagement. In line with the complaint process, an attempt to conduct a cooperative review with the Settlement Council and the Administration was initiated. As a result of incomplete responses to the inquiries and lack of cooperation from the Council and Administration during the review, my predecessor, Dr. John Brosseau, authorized a formal investigation. The results of the investigation and supportive evidence identified that 9 complaints were found to be valid, and are listed below. Two of the complaints investigated were found to be "not supported by the evidence available". My Report was submitted to the Minister of Intergovernmental, International and Aboriginal Relations (the Minister) on November 28, 2011.

Complaint #1: Education Assistance Lending Policy Errors

Three individuals received loans contrary to the Education Assistance Lending Policy and the loans also breached the *Metis Settlements Act* (MSA). Uncovered also was the fact that the Education Society is not a registered society pursuant to provincial legislation.

Six recommendations were made to the Minister based on this complaint.

Complaint #2: Two Unauthorized Bonus Payments

While categorized as Bonuses, the documentation to support this complaint could not be located. However, there were two payments totalling \$10,730 made to an employee that did not comply with the MSA, Settlement By-laws, or Policies.

Seven recommendations were made to the Minister based on this complaint.

Complaint #3: Unauthorized Severance Package of \$24,000 Paid to Resigned Employee

The Settlement Financial Administration By-Law allows for the Administrator to approve expenditures under \$50,000. This severance payment was made by an Administrator who was not in a conflict of interest, contrary to the allegations. I have concluded, however, that this authorization is a very risky administrative and financial practice potentially open to corrupt activities. Given the relatively small settlement budget, \$50,000 represents a considerable percentage of the settlement budget and giving a single person the authority over such a significant sum seems imprudent.

I am of the view that this spending allowance could also contribute to situations where the Administrator is coerced into authorizing expenditures outside of Policies or By-laws.

Three recommendations were made to the Minister based on this complaint.



Complaint #4: False Travel Claims

Four people received funds for mileage in relation to a trip on Settlement business. There was no evidence that the appropriate approvals required by either the Financial Administration By-law or the Settlement Council Remuneration Policy were obtained. In addition, the four travel claims for mileage were paid but only two vehicles were used.

Three recommendations were made to the Minister based on this complaint. One of the people who received funds has reimbursed the settlement; however, based on the fact that the reimbursement came after an investigation was authorized to take place, this issue warranted a criminal investigation. As such, the issue was turned over to the agency of competent jurisdiction, the Royal Canadian Mounted Police (RCMP) for whatever action that agency determined to be appropriate.

Complaint #5: Unauthorized Investment and Travel

Three Councillors travelled out-of-country to research an investment opportunity. While I concluded that the \$5,616 per Councillor appears a little high, there was insufficient evidence to warrant any recommendation to the Minister that the claims were overstated. However, an investment of \$150,000, in my opinion, violated the Financial Administration By-law, the MSGC Business Activities Policy, and sections of the MSA. It is my view that the Council acted contrary to expert financial advice that indicated this investment was high risk and, as such, the Council acted irregularly, improperly, and improvidently.

Two specific recommendations were submitted to the Minister on this complaint.

Complaint #6: Kick Backs to a Settlement Employee

The specific complaint of kick backs was not supported by the evidence available. There were some payments made by a contractor to a former Settlement Employee. In and of itself, there was no breach of any policy, By-law, or Legislation. However, I believe that former employees should not be able to "lobby" members of Council for a set period of time after they leave a position.

Two recommendations were submitted to the Minister on this complaint.

Complaint #7: Personal Use of Settlement Credit Card

A settlement employee used a Visa credit card belonging to the settlement for personal purchases. While the use of a settlement credit card for personal charges is not explicitly prohibited in the Finance Administration By-law, such purchases are not authorized by the budget by-law, and therefore are not permitted expenditures pursuant to the MSA. At the time of the investigation this former employee had repaid a portion of the personal purchases. Additionally, an expenditure was made on this credit card as a contribution to a political party contrary to the Alberta Elections Act.

Three specific recommendations were made to the Minister on this complaint. This issue warrants a criminal investigation. As such, this issue was turned over to the agency of competent jurisdiction, the RCMP, for whatever action that agency deems appropriate.

The contribution to a political party also warrants an investigation with the agency of competent jurisdiction, the Alberta Chief Electoral Officer, and the file was duly turned over for whatever action that agency deems appropriate.

Complaint #8: Illegal Renovation Contract

A housing renovation contract was signed by a Councillor and a settlement member as well as initialled by two other Councillors, the date on which was past a specific fiscal year. One Councillor and the settlement member subsequently changed and initialled an amended date which was prior to the end of a fiscal year. Attempts to cover up this action was unsuccessful and both the Councillor and the settlement member violated the provisions of the Financial Administration By-law and the MSA.

Three recommendations were made to the Minister on this complaint. This issue also warrants a criminal investigation. As such, this issue was turned over to the agency of competent jurisdiction, the RCMP, for whatever action that agency deems appropriate.

Complaint #9: Unauthorized Councillor Travel for Out-of-Country Trip

A Councillor took a trip out-of-county for personal reasons and yet a travel claim for "exploring economic/governance matters" was submitted and paid. The claim was signed by the Administrator but not by the Councillor and the Finance Director. The Councillor, after the start of the investigation, had the Administrator change the reason for the expenditure to a "repayable advance". This expenditure was a contravention of the settlement by-laws and the MSA.

Two recommendations were made to the Minister on this complaint. Notwithstanding that I have information that the funds will be or have been reimbursed to the settlement, this issue also warrants a criminal investigation. As such, this issue was turned over to the agency of competent jurisdiction, the RCMP, for whatever action that agency deems appropriate.

Code of Conduct

A Settlement Member filed a complaint with our office alleging that they had been the victim of an unprovoked verbal assault committed by a serving Settlement Councillor. This incident had taken place off-settlement; however, other settlement members had been in attendance and the Complainant stated that they had felt threatened, belittled, and embarrassed. The OMSO determined that the particular Settlement in question had no Code of Conduct or other rules in place stipulating a standard of proper etiquette, demeanor, or behavior for Council Members, Administration, and/or Settlement employees.

It was suggested that the Settlement consider establishing a Code of Conduct. The Complainant was advised that, given the lack of any related resolution, By-law, or Policy governing the personal behavior of Council or Settlement staff, the OMSO could not go further with the complaint. The Complainant was advised to advocate for the drafting of a Settlement Code of Conduct.

The MSO strongly endorses professionalism and the demonstration of courtesy by individuals representing the Settlements either as Councillors, Administrators, and/or employees. It is important, however, that the standards and the enforcement of those standards are established and maintained by the individual Settlements.

Job not Posted

A Settlement Member complained that a person had been hired by the Settlement without the job being posted and without holding a competition for the position. Upon review, it was determined that the individual had actually been hired by a separate settlement-based corporation.

Although created and wholly-owned by the Settlement, this private corporation operates under its own Articles of Incorporation and By-laws. The associated By-laws do not oblige the corporation to use the same administrative and hiring practices that apply to the Settlement, nor do Settlement Policies exist requiring the corporation to do so.

The MSO believes that for the purposes of fairness, the administration of settlement-based entities like corporations and societies should, whenever practical, mirror the practices of the Settlement itself. This practice is something that councils might consider when they create affiliate organizations. Alternately, councils can create rules that effectively bind the operation of those entities to the same standards and practices that apply to the Settlement.

Unauthorized Expense Claims

A Settlement Member complained that a Councillor who, although no longer living on the Settlement, continued to expense trips back and forth between the Settlement and Edmonton for meetings. The member had two concerns: a) that the Councillor in question was able to hold Office and receive associated benefits when they were no longer resident on the Settlement, and b) that expense claims submitted for travel back and forth between Edmonton and the Settlement were false, although the Complainant was not specific about the dates of these alleged claims.

In regards to the first concern, Section 15 of the *Metis Settlements Act* (MSA) states that for someone to be eligible for nomination as a councillor they

have to have "resided in the settlement area for the 12 months immediately preceding nomination day, or any lesser period prescribed in a settlement by-law". The Act, however, is silent on what should happen if a Councillor begins to live off-settlement after being elected. In the absence of a specific Settlement By-law, whether this particular Councillor was resident on the Settlement becomes irrelevant as there is nothing in the Act or the Settlement's By-laws requiring them to continue living there in order to remain as a Councillor.

With respect to the allegedly false expense claims, the Administrator confirmed that there is a policy to compensate Councillors and employees for certain expenses to be paid by the Settlement, including mileage and per diem expenses for food and lodging for trips taken on Settlement business. The Administrator was aware that the Councillor in question had an alternate residence near Edmonton, but disputed that the individual was not living on the Settlement. The Administrator indicated that the Councillor maintained a settlement-based residence and was present on a routine basis including attending social and administrative functions. Additionally, the Administrator stated that there was no indication of any false travel claims submitted by the Councillor in question.

The complainant was advised that this matter would be pursued further only if there were specific allegations involving the submission of false claims.

Settlement Investment

In the previous Annual Report, the MSO indicated that an investigation was being concluded regarding a major investment by one of the settlements where it appeared that the majority, if not all, of the funds that were invested had been lost.

This investigation was complex and included several aspects. Investigators considered whether the Settlement Council and Administration had properly applied the legislation, By-laws, and Policies with

respect to investing. The MSO also considered whether the financial condition of the Settlement itself had been affected as the result of being victimized by a potentially fraudulent scheme. Two separate reports were submitted on the issues.

The first report dealing with how the investment was initiated and administered by the Settlement has been received and is currently being reviewed by the MSO.

The second report indicated that there was sufficient evidence of possible criminal acts to justify further follow-up by law enforcement. The referral was made to the law enforcement body in the jurisdiction where the company who issued the shares had been operating.

This second investigation also revealed that some of the decision-makers on the Settlement had acquired personal shareholdings in the company. In the case of one individual, MSO investigators were unable to establish that a block of shares received from the company had been legitimately purchased. This matter was referred separately to the law enforcement body of competent jurisdiction for consideration and follow-up investigation at their discretion.

Housing Renovation Injustices

In 2006 a number of complaints were received from Settlement Members alleging that their Councillors had participated in and voted on motions to award themselves up to \$10,000 in housing renovations. The complainants further alleged that some Members were billed for housing repairs and renovations that they had never received. A cooperative review revealed that the complaints were valid and Council did not appear to be following the processes in place. A formal investigation was authorized, which uncovered one fraudulent invoice and, more generally, revealed that there was a great lack of control and accountability in the housing repair process, also Council had changed the Housing Repair Policy, removing processes that should have promoted fairness.

As a result of these findings, appropriate recommendations were made to the Settlement Council. Despite a request for a written response to the recommendations in 2008, none was received until early in 2012 after a change in Administration at the Settlement. The new Settlement Administrator indicated that the recommendations would be implemented.

Bill C-31 and Sitting Councillors

A Settlement Member approached one of their Councillors regarding the eligibility of another Councillor to remain on Council given that this individual had regained status under the *Indian Act* through the Bill C-31 amendment. The Settlement Member believed that a recent decision by the Supreme Court of Canada, upholding a ruling by an Alberta Court that allowed individual Settlements to remove Status Indians from their Membership lists, meant that the Councillor in question should be removed from office immediately. The Councillor who was approached by the Member sought the advice of the MSO on the matter. The MSO informed the Councillor that it was his understanding that the Councillor in question was "grandfathered in" as a Settlement Member through a Settlement By-law. The MSO indicated that only legal counsel could give direct advice on this matter. The MSO added that in order to remove the Councillor from office using the Supreme Court decision, the By-law that grandfathered the Councillor in as a Settlement Member would have to be amended through the proper amendment process involving all Settlement Members. The Councillor indicated that he was satisfied with the assistance he had received.

Following Jurisdiction

A complaint was received concerning a Settlement Member who had recently obtained employment with the Settlement. The Complainant indicated that despite this position always being filled by a full-time, permanent, salaried employee in the past, the new employee was engaged as a contractor instead. The Complainant alleged that this new contractor had a Maintenance Enforcement Order against in place, which would require the employer (the Settlement) to deduct money directly from their salary. Since this person was being employed as a contractor, the Settlement was not legally obligated to deduct the funds. The Complainant also indicated that the new contractor was a close personal friend of one of the Settlement Councillors, and suspected that there was an agreement between Council and the friend to hire the person as a contractor, and thus help this person evade paying the funds they had been ordered to pay.

The OMSO Advisor determined that this matter did not fall within the jurisdiction of the OMSO. Furthermore, as the Member involved was hired as a contractor, the Settlement had no legal obligation to enforce the Order. At the Complainant's request, the Advisor suggested they contact the Maintenance Enforcement Program directly and provided a contact name and phone number.



 APPENDICES

APPENDIX A Ministerial Orders



Aboriginal Relations

Métis Settlements Act and the Métis Settlements Ombudsman Regulation

MINISTERIAL ORDER
MSO-03/2010

APPOINTMENT OF THE METIS SETTLEMENTS OMBUDSMAN

I, Len Webber, Minister of Aboriginal Relations, pursuant to section 5(3) of the *Métis Settlements Ombudsman Regulation*, hereby appoint Harley Johnson as the Métis Settlements Ombudsman.

Ministerial Order MSO-03/2009 is repealed. This order comes into force on November 5, 2010.

DATED at the City of Edmonton, in the Province of Alberta, this 5 day of November, 2010.

Honourable Len Webber
Minister, Aboriginal Relations

203 Legislature Building, 10800 - 97 Avenue, Edmonton, Alberta T5K 2B6 Canada Telephone 780-422-4144 Fax 780-644-8389

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APPENDIX B Budget Variance Report
Office of the Métis Settlements Ombudsman
as of March 31, 2012

	2010/2011		2011/2012	
	Budget Allocation	Actual Expenditure	Budget Allocation	Actual Expenditure
Manpower	\$ 419,000.00	\$ 596,960.00	\$ 514,300.00	\$ 454,100.00
Supplies & Services	\$ 226,000.00	\$ 577,010.00	\$ 249,700.00	\$ 184,100.00
Total	\$ 645,000.00	\$ 1,173,970.00	\$ 764,000.00	\$ 638,200.00
Variance	—	\$ (528,970.00)	—	\$ 125,800.00



■ APPENDIX C Administrative Fairness Checklist

Introduction

An important step along the road to self governance and self regulation of Alberta's eight Métis Settlements is the confidence that everyone is treated fairly and with respect, especially when dealing with Councillors, decision makers, and persons in positions of authority.

Checklist

This Administrative Fairness Checklist is prepared to guide Council, Settlement employees, Settlement entities, decision makers, and Settlement members in their daily business with each other. Answering the following questionnaire honestly will help you decide whether business on your Settlement is being conducted as fairly as possible. This Checklist is not a legal document but it is a living document that will change from time to time as the need arises.

Fairness:

- ▶ Is all Settlement business conducted in a fair and transparent manner?

Understanding the Process:

- ▶ Do Councillors, Settlement employees, and decision makers ensure that everyone understands their roles and responsibilities?

Impartiality:

- ▶ Do Councillors, Settlement employees, and decision makers make decisions based on what is in the best interest of the Settlement as a whole, eliminating self-interest?

Professional Conduct:

- ▶ Do Councillors, Settlement employees, and decision makers treat everyone with dignity and respect?
- ▶ Do members treat Councillors, Settlement employees, and decision makers with dignity and respect?
- ▶ Is unprofessional or inappropriate (unethical, unprincipled, immoral, or dishonourable) conduct allowed to occur?
- ▶ Do Councillors, Settlement employees, and decision makers utter public remarks that are inappropriate?
- ▶ Do Councillors or decision makers threaten or bully employees or Settlement members?
- ▶ Is the use of profane language tolerated?
- ▶ Are policies in place to make offenders of unprofessional or inappropriate conduct accountable for their actions?
- ▶ Do Councillors, Settlement employees, and decision makers misuse or abuse their positions?

The Right to Voice a Concern:

- ▶ Are you aware that everyone has the right to voice a concern without fear of punishment or negative consequence?
- ▶ Are you also aware that punishing or allowing negative consequences to occur to someone that has voiced a concern is a serious breach of administrative fairness and/or the Canadian Charter of Rights and Freedoms?

Public Information:

- ▶ Is public information available in a format that is understandable and written in plain language?

Clarification:

- ▶ Are adequate explanations given to, or information provided to, members asking for details about Settlement activities, personal entitlements, eligibility criteria, etc.?
- ▶ Are efforts made to refer members to the appropriate agencies?

Forms:

- ▶ Are all forms that require completion easy to read and written in plain language?

Freedom of Information and Protection of Privacy (FOIP):

- ▶ Are FOIP forms available upon a member's request?
- ▶ Is the privacy of individuals adequately protected?

Letters and Correspondence:

- ▶ Are members' concerns being responded to in a timely fashion in the form of a letter that can clearly be understood?

Facilities:

- ▶ Are work places on the Settlement a safe and healthy environment for staff?
- ▶ Are Settlement-owned buildings and offices designed to respect and protect the privacy of Settlement members, outside agencies, staff, and confidential information?

Timeliness:

- ▶ Are decisions made and actions taken within a reasonable time period?
- ▶ Are adequate reasons for decisions and actions communicated to or provided to the affected parties in a meaningful and timely way?

Complaint Procedures:

- ▶ Are complaint procedures well known, clearly defined, and understandable?
- ▶ Are community suggestions for improving complaint procedures acted upon?
- ▶ Are complaints given careful consideration and responded to in a timely fashion?

Appeal Review and Complaint Procedure:

- ▶ Are affected individuals informed about ways to appeal or to request a review regarding decisions made or actions taken?
- ▶ Is this information provided in a polite, respectful way?
- ▶ Are Settlement members aware of these rights through posters and/or brochures?
- ▶ Could relationships with other partners, outside communities, and government agencies be made better through adjustments to policies and procedures?

Roles and Responsibilities:

- ▶ Do all Settlement positions have clearly defined job descriptions?
- ▶ Do the job titles accurately describe the work done?
- ▶ Can jobs be combined or re-organized to achieve a higher quality or better delivery of services?

Co-ordination:

- ▶ Could service quality and fairness to Settlement members be improved through adjustments in policies and procedures?
- ▶ What procedures or checks and balances are in place to ensure that work is being done in the way it was originally intended?
- ▶ Is there an attitude in the work place that promotes growth, change, and ongoing improvement?

Consultation with Settlement Members:

- ▶ Are systems in place that accurately record and organize statistical information so that changes in programs or policies can be evaluated and adjusted if necessary?
- ▶ Are Settlement members invited to take part in the planning of, or changes to, the way the Settlement operates?

Housing:

- ▶ Is the distribution/allocation of Settlement housing fair?
- ▶ Do all eligible Settlement members have equal opportunity to receive Settlement housing?
- ▶ Is there clearly defined selection criteria established to receive housing?
- ▶ Are the selection criteria available to the applicants?
- ▶ Are unsuccessful applicants being notified in writing as to why they were not selected?

Jobs:

- ▶ Are members given an equal opportunity to compete for Settlement jobs?
- ▶ Are contracts and work distributed fairly amongst Settlement members?
- ▶ Are Settlement policies being followed in the hiring process?

April 2011



APPENDIX D Conflict of Interest Checklist

Introduction

All members of a Métis Settlement community are entitled to a governance structure that operates with fairness, integrity and impartiality of decision-making. Public trust is damaged when the private interests of an elected official or an employee takes, or appears to take, priority over the public interest, thus leading to a *conflict of interest* or a perceived *conflict of interest*.

Checklist

This Conflict of Interest Checklist is prepared to guide Councils, Settlement employees, decision makers, and Settlement members in their daily business with each other. Answering the following questionnaire honestly will help you decide whether business on your Settlement is being conducted in an appropriate manner. This Checklist is a living document that will change from time to time as the need arises.

Definitions:

Conflict of Interest: arises when decision makers (Councillors, Settlement employees, Settlement entity employees) are involved in a decision or action during the course of their public duties, knowing that there is, or may be, an opportunity to further his/her personal or financial interests or those of an immediate family member.

Perceived Conflict of Interest: arises when a reasonable person could believe that the decision-maker's judgment is likely to be affected by a private interest.

Potential Conflict of Interest: is something that may develop into an actual conflict of interest.

Immediate Family: means spouse, father, mother, brother, sister, and children.

Conflict of Interest Policy:

- ▶ Is there Settlement policy and/or guidelines regarding *conflict of interest* and, if so, is it followed?
- ▶ Are these policy/guidelines consistent with the *Métis Settlements Act* and/or policies developed by the Métis Settlements General Council?
- ▶ Does Council or Administration ensure that all Settlement managers, employees, and decision makers are made aware of the *conflict of interest* policy and guidelines?
- ▶ What actions are required by public office holders?
 - In all cases, the Settlement member who holds a public office is responsible to take immediate action if he/she suspects that an actual, perceived, or potential *conflict of interest* is possible, whether financial or otherwise.
 - Section 39 of the *Métis Settlements Act* requires a Councillor to disclose any real or apparent financial *conflict of interest* to the Council. If the matter before Council is to be decided by a resolution, the Councillor must withdraw from further discussion, voting, or involvement.
 - A Settlement employee is required to immediately disclose a possible *conflict of interest* to his/her supervisor if the employee is in a conflict. The employee must withdraw from any further involvement or action on the matter.

Examples of Conflict of Interest:

While it is not possible to predict all *conflict of interest* situations, you can use the following headings and questions to help identify where most *conflict of interest* situations could occur.

Furthering Private Interests:

- ▶ Does an immediate family member stand to gain or lose financially from the individual's or the organization's decision or action in a matter?
- ▶ Is a Councillor, Settlement employee, or decision maker using his/her position to influence a decision, knowing it might benefit an immediate family member?
- ▶ Is a Councillor, Settlement employee, or decision maker using or communicating privileged or confidential information, knowing it might benefit an immediate family member?
- ▶ Does a Councillor, Settlement employee, or decision maker use his/her position to influence a decision or an action, knowing that it may benefit, or appear to benefit, an immediate family member?

Nepotism:

- ▶ Is a Councillor, Settlement employee, or decision maker involved in making a decision to grant a home or renovation to an immediate family member?
- ▶ Is a Councillor, Settlement employee, or decision maker involved in interviews or hiring decisions where applicants include immediate family members?

Acceptance of Gifts, Gratuities or Other Benefits:

- ▶ Does a Councillor, Settlement employee, or decision maker accept favours, gifts, services, or hospitality from those who stand to gain or lose from that individual's or the organization's decision or action?

Note: This does not prevent acceptance of small gifts of little value, items of a cultural nature, or those presented as a form of public recognition for good work.

Outside Employment:

- ▶ Do immediate family members of Councillors or Settlement employees gain or appear to gain an unfair advantage over other Settlement members in obtaining contracts or other outside employment due to their access to privileged information?
- ▶ Does a Councillor, Settlement employee, or decision maker conduct private business during working hours to the extent that it interferes with his/her public duty?
- ▶ Does a Councillor, Settlement employee, or decision maker use public premises, equipment, or supplies for private use without appropriate authorization?
- ▶ Does a Councillor, Settlement employee, or decision maker use their public role to advance their own private interests in any way?

Public Statements:

- ▶ Does a Councillor, Settlement employee, or decision maker disclose private or confidential information to those who are not authorized to receive it?

Note: These actions may also be governed by Freedom of Information and Protection of Privacy (FOIP).

Volunteer Activities:

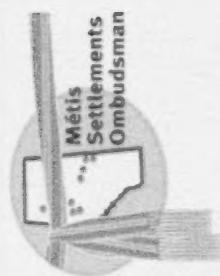
- ▶ Do volunteer activities take up time during working hours?

Note: Individuals are encouraged to participate in volunteer activities unless this causes an actual or perceived conflict of interest.

General Questions to Consider

- ▶ Are the decisions you make as a Councillor, Settlement employee, or decision maker in the best interests of the Settlement as a whole or are they self-serving?
- ▶ Have you made decisions or taken an action that you are not proud of?

APPENDIX E



MSO Information bulletin

Housing – Appeal Process

The issue of housing allocations is a difficult one for decision makers to deal with in a way that is seen as fair and unbiased. Different approaches have been utilized, however, decision makers are still faced with allegations of conflict of interest or bias in their decisions related to housing. This information is being shared with you as it may be of value in helping you with issues relating to housing.

Over the last few years the Métis Settlements Ombudsman ("MSO") has received complaints from Settlement members regarding fairness of how new housing allocations are made. Primarily, members purport the housing allocation process is biased, unfair and driven by personal interests. In an attempt to keep at arm's length some Settlement Councils have appointed a local Housing Committee and in some instances delegate their decision making powers to this Committee. The MSO Office sees this as a positive step that has been advocated in the past by this office. One Council, in order to avoid issues of political influence, has appointed non-settlement members who have experience in the housing field to their Housing Committee.

The role of a Housing Committee is to primarily screen applications and decide which applicants shall receive new housing. While the process leading to the appointment of this Committee appears to be a non-issue, there have been concerns raised about how one may appeal the decision of a Housing Committee. To keep the Committee independent of the Settlement Council, some Councillors wish to remain uninvolved and independent even in the appeal process. While this "hands off approach" by Council guarantees independence of the Housing Committee, there is still an onus on the Council to create an appropriate appeal process for individuals who believe they have been unfairly treated in the selection process.

An appeal is a process requesting, by aggrieved persons, a formal change to an official decision. Grounds for an appeal typically include an error of law, fact, or a procedure. To delegate the appeal of a Housing Committee decision to the Housing Committee is not appropriate as one cannot make an appeal to whomever made a decision in the first place; it must be made to a new entity. At this time there appears to be two alternatives available for an appeal from a Housing Committee decision that would stand the test of administrative fairness. Firstly, if it is an issue of administrative error or unfairness, it could be appealed to the MSO. Alternatively it could be heard by the Settlement Council. However, the appeal must be based on a breach of policy or procedure by a Housing Committee, not simply because the affected party disagrees with the decision that was made by the Committee.

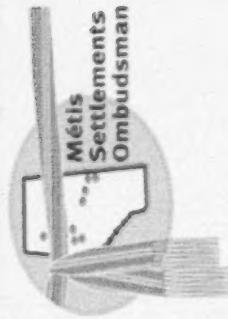
Implications for Settlement Councils:

1. To avoid being accused of enabling or participating in an unfair selection processes the Settlement Council may choose to establish a Housing Selection Committee that is independent of Council.
2. This committee should be given clear and concise criteria by council upon which housing recipients are to be selected.
3. Any appeal of a decision by the Housing Selection Committee should be made to another unbiased body. The MSO will only get involved subsequent to a member exhausting their local appeal process and only to review complaints on an Administrative Unfairness level, as opposed to complaints of a political nature.

Issue #1/07/2009

Office of the Alberta Metis Settlements Ombudsman

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MSO

Information bulletin

Conflict of Interest

Over the last several years the Métis Settlements Ombudsman has dealt with a number of complaints from Settlement members alleging that a member of the Settlement Council was acting in a way that placed the councilor in a conflict of interest.

Generally a conflict of interest exists when a person in a decision making position (councilor or a administrator) makes a decision or influences a decision in which they, or a member of their family, has a private interest and stand to financially gain by the decision being made. An example of this would be when a councilor voted to award a contract to a company owned by his wife.

All elected officials must be very careful not to place themselves in a conflict of interest as at a minimum it invites criticism from their electorate, and in serious cases removal from office. Métis Settlements are especially vulnerable to allegations of conflict of interest because the communities are small and councilors are related to a significant number of the Settlement residents.

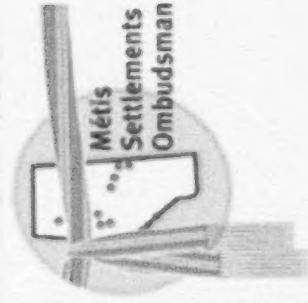
The safest way to handle a potential conflict of interest is for the councilor to not participate in, influence, or vote on the decision being made. Alternatively, they can declare the nature of the potential conflict to Council and have the Council determine if there is a conflict of interest. However, once the council has made a decision the councilor is bound by the decision.

The foregoing is an overview of conflict of interest. However, in the case of Métis Settlements there are legislative exceptions to the above found in the *Métis Settlements Act*, and in particular Sections 16 and 39.1. Section 16 of the *Métis Settlements Act* requires that members who run for Council must file a disclosure statement describing the general nature of each agreement which they have with the Settlement. Section 39.1 of the Act provides that under certain specific circumstances a councilor may have a financial interest in a matter and may not be in a conflict of interest. However, caution is advised and a careful review of section 39.1 is recommended prior to any action being taken by a councilor. Similarly, they should review the financial interest policy of General Council.

Issue #2/10/2009

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MSO

Information bulletin

Councillor & Contractor

Since the MSO office was created there have been allegations raised regarding a conflict of interest based on the sole fact that a serving councillor is also contractor. An allegation of this nature inevitably raises the two following questions:

Question #1 Can a settlement councillor provide contract services to the settlement under the Metis Settlements Act?

1. The simple answer to question #1 is: Yes

The Metis Settlements Act contains provisions which govern the behaviour of council's with respect to contracts between councillors and their settlement. However, the Act does not prohibit a councillor from entering into a contract with a Settlement, provided those contracts meet the requirements of section 39.1 of the MSA.

As well, the councillor must disclose a financial interest in such a contract that he or she may become party too when it is being considered by the settlement council. Following the disclosure of a financial interest, the MSA requires the councillor to remove themselves from deliberations surrounding the matter and the councillor cannot vote on the contract. (*This is same for when an immediate family member of a councillor may become party to a contract that is being considered by the settlement council.)

Question #2 Is the Councillor in a conflict of interest?

The answer to Question #2- It depends on a number of factors and there is no simple answer to this question.

2. A Councillor is not automatically in a conflict of interest for the sole reason of being both a councillor and a contractor. To be deemed in a conflict of interest, there would need to be evidence of a breach of the Act, any local settlement policies and/or laws adopted by that settlement or General Council Policies and in particular General Council Financial Interest Policy.

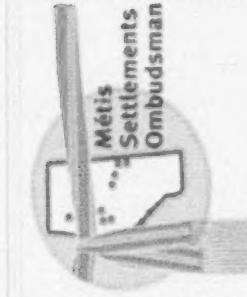
*A competitive employment process must also be done to ensure a fair and equitable process.

Issue #3/1/2010

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MSO

Information bulletin

The fine line between governance & administration

Significant improvements can be made, to the operation and governance of the Métis Settlements, if Council and Administration understand their respective roles in the settlement structure. (See sections 32 to 47 of the *Métis Settlements Act*)

Role of Council-Governance

The role of Council is to govern the affairs of the Settlement by way of by-laws, policies, and council resolutions. Council then hires an Administrator to carry out the implementation of the policies, bylaws and resolutions. It is NOT the role or authority of any *Individual Councillor* to direct the activities of the Administrator or of any Settlement staff member.

Role of the Administration-Carry out Governance

The role of the Administrator is to manage the affairs of the Settlement by implementation of settlement by-laws, policies, and duly passed Council resolutions. Administration staff assist the Administrator in carrying out the operational functions and ultimately report to the Administrator; not individual Councillors.

Council Meeting Minutes

Decisions of Council can only be made in a public forum such as a Council meeting. Decision of Council *must* be recorded in the minutes identifying the "mover", "seconder", and the status of the resolution (carried, defeated).

Council has the authority to hold "in camera" sessions. These "sessions" are primarily used to discuss confidential matters ranging from personnel issues to legal issues. Should Council wish to go in camera, a resolution must be passed to go in camera and a motion when Council returns to the meeting. If Council agrees to a course of action while in camera it must pass a motion at a public meeting for it to have effect.

It is crucial that meeting minutes are recorded in a competent manner. After all, meeting minutes form the organizational memory. Resolutions of Council need to be accurately reflected in the minutes as they become a public record. As always, Council meetings are open to the public.

A Council resolution takes effect the moment the resolution passes. Approval of meeting minutes is not to be unreasonably delayed and should be approved at the beginning of the next Council meeting. Meeting minutes are then to be posted for fourteen days allowing it's membership time to review.

Issue # 6/08/2011

Office of the Alberta Métis Settlements Ombudsman

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